SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 134

MAJOR RAYMOND LISENBA (ROBERT S. JAMES),
Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

BRIEF FOR PETITIONER.

MORRIS LAVINE,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES

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No. 134

MAJOR RAYMOND LISENBA (ROBERT S. JAMES),
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vs.

THE PEOPLE OF THE STATE OF CALIFORNIA.

BRIEF ON CERTIORARI ON HABEAS CORPUS.

To the Honorable Charles Evans Hughes, Chief Justice of the Supreme Court of the United States, and to the Honorable Associate Justices Thereof:

In this matter the entire records, files and proceedings in the case of *Major Raymond Lisenba* v. *The People of the State of California*, No. 133, were adopted by reference in a consideration by the Supreme Court of the State of California (R. 28). A stipulation was also entered by Attorney General Earl Warren, by Warner I. Praul, for the appellee, and Morris Lavine, attorney for appellant, that the records, proceedings, exhibits, files and documents on appeal from the judgment shall be deemed part of the record on proceedings for habeas corpus by reference (R. 32).

Appellant proceeded by habeas corpus to exhaust all State remedies for the protection of his Federal constitutional rights in this matter, and particularly with reference to receiving in evidence the affidavits of Charles H. Hope

to the effect that his testimony was false and perjured and that there was no truth to the so-called rattlesnake story about which he testified.

The points and authorities upon which we rely in this case are as follows:

1. A judgment of conviction for murder resting upon confessions shown to have been extorted by officers of the State by torture of the accused violates procedural due process of law guaranteed by the 14th Amendment to the Constitution of the United States, and such judgment is void.

Chambers v. *Florida*, 309 U. S. 227, 84 L. Ed. 716;
Brown v. *Mississippi*, 297 U. S. 278, 80 L. Ed. 682;
Canty v. *Alabama*, 309 U. S. 629, 84 L. Ed. 988;
White v. *Texas*, 310 U. S. 530, 84 L. Ed. 1342.

To deprive a human being of sleep is a form of torture not less severe than physical violence.

Ziang Sung Wan v. *U. S.*, 266 U. S. 1, 69 L. Ed. 131.

A confession so obtained vitiates the verdict.

Rounds v. *State*, 106 S. W. (2d) 212;
People v. *Dye*, 119 Cal. App. 262;
Downer v. *Dunaway*, 53 F. (2d) 586.

2. The bringing of live, hissing, writhing rattlesnakes into the courtroom during the trial of the case was an appeal to the passions and prejudices of the jury and made the whole proceeding but a mask and pretense of a trial.

Chambers v. *Florida*, 309 U. S. 227, 84 L. Ed. 716;
Frank v. *Mangum*, 237 U. S. 309, 59 L. Ed. 969;
Moore v. *Dempsey*, 261 U. S. 86, 67 L. Ed. 543;
Downer v. *Dunaway*, 53 F. (2d) 586;
Flege v. *State*, 93 Neb. 610, 142 N. W. 276, 47 L. R. A. (N. S.) 1107;
McKay v. *State*, 90 Neb. 63, 132 N. W. 741, 39 L. R. A. (N. S.) 714.

3. Use of evidence from the State of Colorado in the State of California to prove a collateral and disconnected offense was without notice and without opportunity to defend, and therefore was a deprivation of due process of law.

Hurtado v. *California*, 110 U. S. 516, 28 L. Ed. 232, 4 S. Ct. 111;

Iowa Central Ruy. Co. v. *State of Iowa*, 40 L. Ed. 467;

Simon v. *Craft*, 182 U. S. 427, 45 L. Ed. 1165, 21 S. Ct. 836;

Holmes v. *Conway*, 241 U. S. 624, 60 L. Ed. 1211, 36 S. Ct. 681;

Hagar v. *Reclamation Dist.*, 111 U. S. 701, 28 L. Ed. 569, 4 S. Ct. 663;

Hooker v. *Los Angeles*, 188 U. S. 314, 47 L. Ed. 487, 23 S. Ct. 395, 63 L. R. A. 471;

Twining v. *New Jersey*, 211 U. S. 78, 53 L. Ed. 97, 29 S. Ct. 14;

Powell v. *Alabama*, 287 U. S. 45, 77 L. Ed. 158, 53 S. Ct. Rep. 55;

Galpin v. *Page*, 18 Wall. 350;

Snyder v. *Massachusetts*, 291 U. S. 97, 78 L. Ed. 674;

Pennoyer v. *Neff*, 95 U. S. 714, 24 L. Ed. 565.

4. A conviction obtained by perjured testimony is void under the due process clause of the 14th Amendment to the Constitution of the United States.

Mooney v. *Holohan*, 294 U. S. 103, 79 L. Ed. 794;

Jones v. *Commonwealth of Ky.*, 97 F. (2d) 335.

5. Deprivation of counsel after an arrest in California is a deprivation of due process of law guaranteed by the 14th Amendment to the Constitution of the United States.

Powell v. *Alabama*, 287 U. S. 45, 77 L. Ed. 158;

Article I, Sec. 8, Constitution of California.

6. All of these acts constitute hostile discrimination, oppression and inequality, and therefore violate the equal

protection clause of the 14th Amendment to the Constitution of the United States.

Truax v. *Corrigan*, 257 U. S. 312, 66 L. Ed. 254;
Yick Wo v. *Hopkins*, 118 U. S. 374, 30 L. Ed. 227;
People v. *Dye*, 119 Cal. App. 262;
Caldwell v. *State of Texas*, 137 U. S. 692, 34 L. Ed. 816;
Leeper v. *State of Texas*, 139 U. S. 462, 35 L. Ed. 225;
Hurtado v. *California*, 110 U. S. 516, 28 L. Ed. 232.

7. The inhibition contained in the 14th Amendment has exclusive reference to State action and means that no officer or agent by whom its powers are exerted shall deny to any person within its jurisdiction the equal protection of the laws. In this case officers of the law, acting as agents for the State, denied such equal protection, as did the court during the trial of the case.

Ex parte Virginia, 100 U. S. 339;
Smith v. *Texas*, 85 L. Ed. 106.

8. Under the circumstances petitioner was denied due process of law in that the trial court possessed no jurisdiction to enter judgment.

In re Nielsen, 131 U. S. 176, 33 L. Ed. 118;
In re Bonner, 151 U. S. 242, 38 L. Ed. 149, 14 Sup. Ct. Rep. 323;
Powell v. *Alabama*, 287 U. S. 45, 77 L. Ed. 158, 53 Sup. Ct. Rep. 55.

9. The decision of the Supreme Court of California is itself therefore a denial of due process of law and the equal protection of the laws.

Snyder v. *Massachusetts*, 291 U. S. 97, 78 L. Ed. 674, 54 Sup. Ct. Rep. 330;
Twining v. *New Jersey*, 211 U. S. 78;
Rogers v. *Peck*, 199 U. S. 425;
Maxwell v. *Dow*, 176 U. S. 581;

Hurtado v. *California*, 110 U. S. 516;
Frank v. *Mangum*, 237 U. S. 309;
Powell v. *Alabama*, 287 U. S. 45;
Mooney v. *Holohan*, 94 U. S. 102, 79 L. Ed. 347;
Chambers v. *Florida*, 309 U. S. 227, 84 L. Ed. 716;
Brown v. *Mississippi*, 297 U. S. 278, 80 L. Ed. 682;
Canty v. *Alabama*, 309 U. S. 629, 84 L. Ed. 988;
White v. *Texas*, 310 U. S. 530, 84 L. Ed. 1342;
Smith v. *Texas*, 85 L. Ed. 106.

Respectfully submitted,

MORRIS LAVINE,
Attorney for Appellant.